
United States
Circuit Court of Appeals
For the Ninth Circuit.

JOHN SAMLIN,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
District of Montana.

FILED
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F. D. MONTGOMERY
CLERK

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Answer of Court to Writ of Error.....	18
Arraignment	4
Assignment of Errors.... ..	10
Bond on Writ of Error.....	14
Certificate of Clerk U. S. District Court to Transcript of Record.... ..	22
Citation on Writ of Error.....	19
Information.....	2
Judgment.....	7
Names and Addresses of Attorneys of Record.	1
Order Allowing Writ of Error and Fixing Bond.....	13
Petition for Writ of Error.....	9
Plea of Not Guilty.....	4
Praecipe for Transcript of Record.....	21
Trial.....	5
Verdict.....	6
Writ of Error.....	17

Names and Addresses of Attorneys of Record.

FRANK HUNTER, Esq., of Miles City, Montana,
and

Messrs. McINTIRE & MURPHY, of Helena,
Montana,

Attorneys for Defendant and Plaintiff in
Error.

JOHN L. SLATTERY, Esq., U. S. Attorney,
RONALD HIGGINS, Esq., Asst. U. S. Attorney,
W. H. MEIGS, Esq., Asst. U. S. Attorney, all of
Helena, Montana,

Attorneys for Plaintiff and Defendant in
Error. [1*]

In the District Court of the United States in and
for the District of Montana.

No. 3805.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOHN SAMLIN,
Defendant.

BE IT REMEMBERED that on May 7, 1921,
an information was duly filed herein, being in the
words and figures following, to wit: [2]

*Page-number appearing at foot of page of original certified Transcript
of Record.

In the District Court of the United States, District
of Montana.

Information.

United States of America,
District of Montana,—ss.

BE IT REMEMBERED, that George F. Shelton, United States Attorney for the District of Montana, who for the said United States, in its behalf, prosecutes in his own person, comes here into the District Court of the United States for the District of Montana, on the 7th day of May, 1921, in the February, 1921, term of said court, held at the city of Butte, in the State and District of Montana, and for the United States of America, gives the Court to understand and be informed:

That on or about the 19th day of March, 1921, one John Samlin, whose true name is to the informant unknown, in the State and District of Montana, and within the jurisdiction of this court, at 211 N. 6th St., in the city of Miles City, County of Custer, in said State and District of Montana, did then and there maintain a common nuisance, that is to say, a building where intoxicating liquor, to wit, whiskey, was kept and sold, in violation of Title II of the National Prohibition Act, the maintaining of said common nuisance being then and there prohibited and unlawful; contrary to the form of the statute in such case made and pro-

vided, and against the peace and dignity of the United States of America.

GEORGE F. SHELTON,
United States Attorney, District of Montana.

[3]

United States of America,
District of Montana,—ss.

George F. Shelton, being first duly sworn, on oath deposes and says:

That he is a duly appointed, qualified and acting United States Attorney for the District of Montana, and as such makes this verification to the foregoing information; that he knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

GEORGE F. SHELTON.

Subscribed and sworn to before me this 7th day of May, 1921.

H. H. WALKER,
Deputy Clerk U. S. District Court, District of Montana.

Filed May 7, 1921. C. R. Garlow, Clerk. [4]

Thereafter, on June 15th, 1921, defendant was duly called for arraignment, the record thereof being as follows, to wit:

No. 3805.

UNITED STATES.

vs.

JOHN SAMLIN.

Arraignment.

Defendant was duly called for arraignment this day, whereupon Frank Hunter, Esq., asked that his name be entered as attorney for defendant, and it was so ordered. Thereupon counsel was granted leave to file motion to quash, which was set for hearing at 10 A. M. to-morrow.

Entered in open court June 15th, 1921.

C. R. GARLOW,
Clerk. [5]

Thereafter, on June 16th, 1921, plea of not guilty was duly entered herein, the record thereof being as follows, to wit:

No. 3805.

UNITED STATES

vs.

JOHN SAMLIN.

Plea of Not Guilty.

This cause came on regularly for hearing this day on motion to suppress certain evidence, J. L. Slattery, Esq., U. S. Attorney, appearing for plaintiff and Frank Hunter, Esq., appearing for the defendant. Thereupon the motion was argued and submitted, whereupon the Court, after due consideration, ordered that said motion be denied. Thereupon a plea of not guilty was entered on behalf of said defendant, the case is to be tried in July.

Entered in open court June 16th, 1921.

C. R. GARLOW,
Clerk. [6]

Thereafter on July 13th, 1921, the cause came on regularly for trial, the record thereof being as follows, to wit:

No. 3805.

UNITED STATES

vs.

JOHN SAMLIN.

Trial.

This cause came on regularly for trial this day, defendant being present with his attorneys, H. G. Murphy, Esq., and Frank Hunter, Esq., and J. L. Slattery, Esq., U. S. Attorney, appearing for the United States. Thereupon the following were duly impaneled, accepted and sworn as a jury to try the cause, viz.: P. J. Kelly, John W. Fulton, F. A. Rodgers, Charles Oliver, G. W. Stribe, William E. Trenary, Charles F. Olson, John Webster, W. C. Irwin, Jacob Fischer, J. E. W. Clarke and Leo Rheim. Thereupon T. R. Gordon, C. S. Hanna, Geo. W. Farr, R. B. Hayes and H. M. Dengler were sworn and examined as witnesses for plaintiff and plaintiff's exhibits, being two bottles and contents, introduced, whereupon plaintiff rested. Thereupon John Samlin and Helen Hogan were sworn and examined as witnesses for defendant, whereupon the evidence being closed, after the arguments of coun-

sel and the instructions of the Court, the jury retired to consider of its verdict. Thereafter the jury returned into court with its verdict, which was received by the Court and ordered filed and read, and being as follows, to wit: "We, the jury in the above-entitled cause, find the defendant guilty of the unlawful sale of intoxicating liquor, to wit, whiskey, on the 11th and 19th of March, 1921. Jacob Fischer, Foreman.

Thereupon on motion of defendant, Court ordered time for sentence continued until 9:30 A. M. tomorrow.

Entered in open court July 13th, 1921.

C. R. GARLOW,
Clerk. [7]

Thereafter, on July 13, 1921, verdict was duly filed herein, being as follows, to wit:

In the District Court of the United States, District
of Montana.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOHN SAMLIN,
Defendant.

Verdict.

We, the jury in the above-entitled cause, find the defendant guilty of the unlawful sale of intoxicat-

ing liquor, to wit, whiskey, on the 11th and 19th of March, 1921.

JACOB FISCHER,
Foreman.

Filed July 13th, 1921. C. R. Garlow, Clerk.

Thereafter, on July 14, 1921, judgment was duly entered herein, being in the words and figures following, to wit: [8]

In the District Court of the United States, District of Montana.

No. 3805.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOHN SAMLIN,
Defendant.

Judgment.

The United States Attorney with the defendant and his counsel present in court.

The defendant was thereupon duly informed by the Court of the nature of the charge against him as appears in the information herein, and of his arraignment, and plea of not guilty, and of his trial and the verdict of the jury of guilty of the unlawful sale of intoxicating liquor, to wit, whiskey.

And the defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, to which he replied that he

had none, and no sufficient cause being shown or appearing to the Court, thereupon the Court rendered its judgment as follows, to wit:

That whereas the said defendant having been duly convicted in this court of the offense of unlawfully selling intoxicating liquor, to wit, whiskey, in violation of the National Prohibition Act, committed on the 11th and 19th days of March, 1921, at Miles City, in the State and District of Montana.

It is therefore CONSIDERED, ORDERED, AND ADJUDGED that for said offense you, the said John Samlin, be confined and imprisoned in the county jail at Helena, Montana, for the term of five months and that you pay the costs taxed at \$97.44.

Judgment rendered and entered July 14th, 1921.

C. R. GARLOW,

Clerk.

Filed July 14th, 1921. C. R. Garlow, Clerk. [9]

Thereafter, on July 18th, 1921, petition for writ of error was filed herein as follows, to wit:

In the District Court of the United States, for the
District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN SAMLIN,

Defendant.

Petition for Writ of Error.

To the Honorable GEORGE M. BOURQUIN,
United States District Judge of the District
Court Aforesaid:

Now comes John Samlin by his attorney and respectfully shows that heretofore on the 13th day of July, 1921, he was convicted in the above-entitled court and cause by a jury for an alleged violation of the National Prohibition Law and thereafter on the 14th day of July, 1921, judgment was by said Court rendered and entered against him upon the verdict of said jury.

And your petitioner feeling himself aggrieved by the said verdict and judgment entered herein as aforesaid, herewith petitions this Honorable Court for an order allowing him to prosecute a writ of error to the Circuit Court of Appeals of the United States for the Ninth Circuit under and in pursuance of the laws of the United States in said cases made and provided.

WHEREFORE, the premises considered, your petitioner prays that a writ of error do issue that an appeal in this behalf to the United States Circuit Court of Appeals for the Ninth Circuit sitting at the city of San Francisco, in the State of California, for the correction of the errors complained of and herewith assigned, be allowed and that an order be made fixing the amount of security to be given by petitioner in error, conditioned as the law directs, [10] and upon giving such bond as may be required, that all further proceedings may be sus-

pended until the determination of said writ of error by the Circuit Court of Appeals of the United States for the Ninth Circuit, as aforesaid, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said United States Circuit Court of Appeals aforesaid, and your petitioner will ever pray.

JOHN SAMLIN,

Petitioner in Error.

FRANK HUNTER,

McINTIRE & MURPHY,

Attorneys for Petitioner in Error.

Filed July 18, 1921. C. R. Garlow, Clerk. [11]

Thereafter, on July 18th, 1921, assignment of errors was filed herein as follows, to wit:

In the District Court of the United States, for the
District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN SAMLIN,

Defendant.

Assignment of Errors.

Comes now John Samlin, the defendant above named, by his attorneys, and in connection with his petition for a writ of error makes the following assignment of errors which he alleges occurred upon the trial of said cause and upon which he relies to

reverse the judgment against him and in favor of plaintiff herein rendered on the 14 day of July, 1921, in the above-entitled court and cause.

I.

That the verdict of the jury is contrary to law.

II.

That the verdict of the jury herein finds defendant guilty of a crime not alleged in the information herein.

III.

That the information herein charges the defendant with having on or about the 19th day of March, 1921, in the State and District of Montana, and within the jurisdiction of said court, at 211 North Sixth Street in the city of Miles City, county of Custer, in said State and District of Montana, maintained a common nuisance, that is to say, a building wherein intoxicating liquor, to wit, whiskey, was kept and sold in violation of Title II of the National Prohibition Act, and the jury by its verdict in the [12] above-entitled court and cause found defendant guilty of selling whiskey in violation of the National Prohibition Act, and the judgment rendered and entered herein on said verdict convicts defendant of the crime of selling whiskey in violation of the National Prohibition Act, of which crime he was so found guilty by said verdict and the judgment of the court said defendant was not on trial nor charged therewith.

IV.

That the Court erred in entering judgment herein

in favor of the United States and against the defendant.

V.

That the Court erred in pronouncing sentence upon said defendant and rendering and entering judgment against him herein.

VI.

That the Court erred in not discharging defendant after it received the verdict of the jury herein.

WHEREFORE said John Samlin prays that said judgment in favor of the plaintiff and against said defendant be reversed and set aside and the District Court aforesaid be directed to enter judgment in favor of defendant and against the United States and dismiss said cause.

FRANK HUNTER,

McINTIRE & MURPHY,

Attorneys for Defendant.

Filed July 18, 1921. C. R. Garlow, Clerk. [13]

Thereafter, on July 18th, 1921, order allowing writ of error and fixing bond was filed herein, as follows, to wit:

In the District Court of the United States, for the District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN SAMLIN,

Defendant.

Order Allowing Writ of Error and Fixing Bond.

Upon motion of McIntire and Murphy, the attorneys for the above-named defendant, and upon the filing of a petition for a writ of error and an assignment of errors,—

IT IS HEREBY ORDERED that writ of error be and the same is hereby allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the judgment heretofore entered herein, and that a transcript of the records, proceedings and papers in this cause duly authenticated be sent to the said United States Circuit Court of Appeals for the Ninth Circuit and that the amount of the bond on said writ of error to be furnished by the said defendant be and the same is hereby fixed at the sum of Five Hundred Dollars (\$500.00), and upon due execution and approval of said bond the same shall amount as supersedeas herein pending proceedings upon said writ of error in said Circuit Court of Appeals.

Dated Helena, Montana, this 18th day of July, 1921.

BOURQUIN,
Judge.

Filed July 18, 1921. C. R. Garlow, Clerk. [14]

Thereafter on July 18th, 1921, bond on writ of error was filed herein, as follows, to wit:

In the District Court of the United States, for the
District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN SAMLIN,

Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:
That we, John Samlin, as principal, and A. L. Smith, and W. H. Dickinson, of the city of Helena, county of Lewis and Clark, State and District of Montana, as sureties, are held and firmly bound to the United States of America in the full and just sum of Five Hundred Dollars (\$500.00), lawful money of the United States, to be paid to the said United States of America, for which payment well and truly to be made we bind ourselves, our executors, administrators, heirs and assigns, jointly and severally by these presents.

Signed and sealed this 18th day of July, 1921.

WHEREAS lately at a term of the District Court of the United States for the District of Montana sitting at Helena in said District in a suit pending in said court in which the United States of America is plaintiff, and said John Samlin, defendant, being cause numbered 3805, in which the said defendant was charged with maintaining a nuisance in viola-

tion of the National Prohibition Act, and upon a trial thereof and a verdict of guilty was returned by a jury and judgment was rendered against said defendant by the court that said defendant be imprisoned in the common jail of Lewis and Clark County, Montana, for a period of five months and to pay the costs of suit, and the said John Samlin has [15] or is about to file in said court his petition for and obtain a writ of error to the Circuit Court of Appeals of the United States for the Ninth Circuit, and obtain a citation directed to the United States of America citing it to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, to be held in the city of San Francisco, in the State of California, according to law within thirty days from the date thereof.

NOW, THEREFORE, the condition of this obligation is such that if the said John Samlin shall prosecute his writ of error to effect and pay the said judgment for costs and surrender himself in execution of the judgment heretofore entered herein against him and pay the costs and damages of the United States of America in said Circuit Court of Appeals, in the event that he fails to make his plea good on said writ of error, or on a dismissal thereof, then the above obligation to be void; otherwise to remain in full force and effect.

JOHN SAMLIN.

A. L. SMITH.

W. H. DICKINSON. [16]

State of Montana,
County of Lewis and Clark,—ss.

A. L. Smith and W. H. Dickinson, being first duly sworn, each for himself, deposes and says: That he is a resident and freeholder within the County of Lewis and Clark, State and District of Montana; that he is worth the amount of one thousand dollars (\$1,000.00), which is double the sum specified in the foregoing bond as the penalty thereof, over and above all his just debts and liabilities exclusive of property exempt from execution. W. H. Dickinson, freeholder in Jefferson County, Montana.

A. L. SMITH.

W. H. DICKINSON.

Subscribed and sworn to before me this 18th day of July, 1921.

[Notarial Seal] HOMER G. MURPHY,
Notary Public for the State of Montana, Residing
at Helena, Mont.

My commission expires Mch. 28, 1923.

United States of America,
District of Montana,—ss.

I, Julius Brass, United States Commissioner, do hereby approve the foregoing bond as to the sufficiency of the sureties therein mentioned.

[Seal]

J. H. BRASS,
United States Commissioner.

Filed July 18, 1921. C. R. Garlow, Clerk. [17]

Thereafter on July 18th, 1921, writ of error was duly issued herein, which original writ is hereto annexed and is in the words and figures following, to wit: [18]

In the District Court of the United States, for the
District of Montana,

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN SAMLIN,

Defendant.

Writ of Error.

United States of America,—ss.

The President of the United States of America to the United States of America, Defendant in Error, and the Honorable John L. Slattery, United States Attorney for the District of Montana, Its Attorney, GREETING:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in said District Court before you between the United States of America, plaintiff, and John Samlin, defendant, a manifest error has happened to the damage of said John Samlin as by his complaint and petition appears, and we being willing that error, if any hath been, should be corrected and full and speedy justice be done to the aforesaid parties in this behalf, do command you if judgment be therein given, that under your seal you send the record and proceedings aforesaid, with all things concerning the

same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, in the State of California, where said court is sitting, within thirty days from the date hereof, in said Circuit Court of Appeals to be then and there held, and the records and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein according to law what [19] of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable WILLIAM H. TAFT, Chief Justice of the United States, this 18th day of July, 1921.

[Seal]

C. R. GARLOW,
Clerk of the United States District Court, District of
Montana. [20]

Answer of Court to Writ of Error.

The answer of the Honorable, the District Judge of the United States for the District of Montana, to the foregoing writ:

The record and proceedings whereof mention is within made, with all things touching the same, I certify, under the seal of the said District Court of the United States, to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within

contained, in a certain schedule to this writ annexed, as within I am commanded.

By the Court:

[Seal]

C. R. GARLOW,
Clerk.

By H. H. Walker,
Deputy. [21]

[Endorsed]: No. 3805. In the District Court of the United States for the District of Montana. United States vs. John Samlin. Writ of Error. Filed July 18th, 1921. C. R. Garlow, Clerk. [22]

Thereafter, on July 19th, 1921, citation was duly issued herein, which original citation is hereto annexed and is in the words and figures following, to wit: [23]

In the District Court of the United States, for the
District of Montana,

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN SAMLIN,

Defendant.

Citation on Writ of Error.

United States of America,—ss.

The President of the United States of America to the United States of America, Defendant in Error, and the Honorable John L. Slattery, United States Attorney for the District of Montana, Its Attorney, GREETING: .

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the city of San Francisco, State of California, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the District of Montana, wherein John Samlin is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error as in said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Dated this 19th day of July, 1921.

BOURQUIN,

Judge. [24]

Due service of within citation and receipt of copy thereof this 19th day of July, 1921, is hereby admitted and acknowledged.

W. H. MEIGS,

Asst. U. S. Attorney.

[Endorsed]: No. 3805. In the District Court of the United States, for the District of Montana. United States of America, Plaintiff, vs. John Samlin, Defendant. Citation on Writ of Error. Filed July 19, 1921. C. R. Garlow, Clerk. By H. H. Walker, Deputy. [25]

Thereafter on July 19th, 1921, praecipe for transcript was filed herein, being as follows, to wit:

In the District Court of the United States, for the
District of Montana.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN SAMLIN,

Defendant.

Praecipe for Transcript of Record.

To C. R. Garlow, Clerk of the Above-entitled Court:

You will please make up the transcript on writ of error of the above-entitled defendant and plaintiff in error herein, taking care that the same is a true and complete record, containing in itself and not by reference all papers and other proceedings which are necessary to the hearing in the United States Circuit Court of Appeals for the Ninth Circuit, and to that end including therein:

1. The judgment-roll in the above-entitled cause, including the information, clerk's minute entry of the defendant's arraignment and plea; minutes of the court during the trial of said cause; the verdict of the jury; the judgment.
2. Petition for writ of error.
3. Assignment of errors.
4. Order allowing writ of error.
5. Bond of defendant.
6. Writ of error.

7. Citation on writ of error.
8. Answer of court to writ of error.
9. Clerk's certificate.

And all other papers and documents necessary to a complete [26] record in said writ of error.

Dated this 18th day of July, 1921.

FRANK HUNTER,
McINTIRE & MURPHY,
Attorneys for Defendant.

Due service of within praeceipe and receipt of copy thereof this 19th day of July, 1921, is hereby admitted and acknowledged.

W. H. MEIGS,
Attorney for U. S.

Filed July 19, 1921. C. R. Garlow, Clerk. [27]

**Certificate of Clerk U. S. District Court to Transcript
of Record.**

United States of America,
District of Montana,—ss.

I, C. R. Garlow, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 28 pages, numbered consecutively from one to 28, inclusive, is a full, true and correct transcript of the record and all proceedings had in said cause, and the whole thereof, as appears from the original records and files of said court in my custody as such clerk; and I do further certify and return that I have an-

nexed to said transcript and included within said pages the original citation and writ of error issued in said cause.

I further certify that the costs of the transcript of record amount to the sum of Seven and 40/100 Dollars (\$7.40), and have been paid by the plaintiff in error.

Witness my hand and the seal of said court at Helena, Montana, this 3d day of August, A. D. 1921.

[Seal]

C. R. GARLOW,

Clerk.

By H. H. Walker,

Deputy. [28]

[Endorsed]: No. 3746. United States Circuit Court of Appeals for the Ninth Circuit. John Samlin, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Montana.

Filed August 8, 1921.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

